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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3588

11 **JOHANA SANDOVAL**
12 **1929 Rheem Avenue**
13 **Richmond, CA 94801**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 50785**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about August 7, 2003, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 50785 to Johana Sandoval (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on December 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and will require a new application.

STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but not be limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

1 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
2 drug or dangerous device except upon the prescription of an authorized prescriber.

3 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
4 controlled substance, except that furnished upon a valid prescription/drug order.

5 10. Section 4063 of the Code provides, in pertinent part, that no prescription for a
6 dangerous drug may be refilled except upon authorization of the prescriber.

7 11. Section 4324 of the Code, in pertinent part, makes it unlawful for a person to falsely
8 make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or
9 to have in his or her possession a drug secured by a forged prescription.

10 12. Health and Safety Code section 11150 provides, in pertinent part, that no person other
11 than an authorized prescriber shall write or issue a prescription.

12 13. Health and Safety Code section 11157 provides that no person shall issue a
13 prescription that is false or fictitious in any respect.

14 14. Health and Safety Code section 11170 provides that no person shall prescribe,
15 administer, or furnish a controlled substance for himself or herself.

16 15. Health and Safety Code section 11173, subdivision (a), provides that no person shall
17 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
18 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
19 or subterfuge; or (2) by the concealment of a material fact.

20 16. Health and Safety Code section 11175 makes it unlawful for any person to obtain or
21 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health
22 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant
23 prescription, or to possess a controlled substance obtained by such a prescription.

24 17. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
25 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
26 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

27 18. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or
28 alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged

1 or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered
2 prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.

3 COST RECOVERY

4 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation of the licensing
6 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

7 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

8 20. Section 4021 of the Code states:

9 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
10 11053) of Division 10 of the Health and Safety Code.”

11 21. Section 4022 of the Code states, in pertinent part:

12 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
13 except veterinary drugs that are labeled as such, and includes the following:

14 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
15 prescription,’ ‘Rx only,’ or words of similar import.

16 ...

17 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
18 prescription or furnished pursuant to Section 4006.”

19 22. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
20 compounds of varying dosages of acetaminophen (aka APAP) and **Hydrocodone**, a Schedule III
21 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
22 drug as designated by Business and Professions Code section 4022. The varying compounds are
23 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

24 23. **Soma** is a brand name for **Carisoprodol**, a dangerous drug as designated by Business
25 and Professions Code section 4022. It is a muscle relaxant.

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FACTUAL BACKGROUND

24. Between in or about June 2001 and in or about August 2008, Respondent worked as a pharmacy technician at a Costco Pharmacy (#482; PHY 40359) in Richmond, CA, where by virtue of her employment she had access to controlled substances and dangerous drugs.

25. During the tenure of her employment by Costco, Respondent used her access to divert/steal controlled substances and/or dangerous drugs, including **Hydrocodone with APAP**-and/or **Carisoprodol**-containing controlled substance/dangerous drug products.

26. The exact number of instances of diversion/theft by Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in the course of investigations conducted by Costco Pharmacy and by Board Inspector(s), the following were among the observations, admissions, and revelations reported:

a. On or about April 14, 2008, April 21, 2008, May 15, 2008, June 10, 2008, June 30, 2008, July 16, 2008, August 6, 2008, and/or August 20, 2008, Respondent fraudulently and/or falsely created, initiated, processed, filled, and/or furnished false or fictitious prescriptions and/or refill prescriptions for Patient V.S.¹ for **Hydrocodone with APAP** products, without prescriber authorization, thereby furnishing to herself or another up to 1,560 tablets of **Hydrocodone**.

b. On or about May 22, 2008, May 30, 2008, June 3, 2008, June 10, 2008, June 17, 2008, July 8, 2008, July 23, 2008, and/or August 15, 2008, Respondent fraudulently and/or falsely created, initiated, processed, filled, and/or furnished false or fictitious prescriptions and/or refill prescriptions for Patient B.S.¹ for **Carisoprodol** (or **Soma**) products, without prescriber authorization, thereby furnishing to herself or another up to 370 tablets of **Carisoprodol**.

c. On or about May 12, 2008, July 15, 2008, August 6, 2008, August 13, 2008, and/or August 23, 2008, Respondent fraudulently and/or falsely created, initiated, processed, filled, and/or furnished false or fictitious prescriptions and/or refill prescriptions for Patient A.A.¹ for **Carisoprodol** (or **Soma**) products, without prescriber authorization, thereby furnishing to herself or another up to 500 tablets of **Carisoprodol**.

¹ The full name will be provided during discovery.

1 FIRST CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 27. Respondent is subject to discipline under section 4301(f) of the Code, in that
4 Respondent, as described in paragraphs 24 to 26 above, committed acts involving moral
5 turpitude, dishonesty, fraud, deceit, or corruption.
6

7 SECOND CAUSE FOR DISCIPLINE

8 (Creation/Signature of False Documents)

9 28. Respondent is subject to discipline under section 4301(g) of the Code in that
10 Respondent, as described in paragraphs 24 to 26 above, created and/or signed documents that
11 falsely represented the existence or nonexistence of a state of facts.
12

13 THIRD CAUSE FOR DISCIPLINE

14 (Furnishing of Controlled Substance(s)/Dangerous Drug(s))

15 29. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
16 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
17 in paragraphs 24 to 26 above, furnished to herself or another, and/or conspired to furnish, and/or
18 assisted or abetted furnishing, without a prescription, a controlled substance or dangerous drug.
19

20 FOURTH CAUSE FOR DISCIPLINE

21 (Possession of Controlled Substance(s))

22 30. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
23 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
24 in paragraphs 24 to 26 above, possessed, conspired to possess, and/or assisted in or abetted
25 possession of, a controlled substance, without a prescription.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Unlawful/Forged Prescriptions/Refills of Prescriptions)

3 31. Respondent is subject to discipline under sections 4301(j), (o), 4063 and/or 4324 of
4 the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that Respondent, as
5 described in paragraphs 24 to 26 above, refilled a prescription for a dangerous drug without a
6 prescriber authorization, signed the name of another and/or falsely made, altered, forged, uttered,
7 published, passed, or attempted to pass, as genuine, a prescription and/or possessed drugs secured
8 by such forged prescription, and/or conspired, assisted in and/or abetted any of these acts.

9
10 SIXTH CAUSE FOR DISCIPLINE

11 (Issuance and/or Use of Invalid Prescription(s))

12 32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
13 and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in
14 paragraphs 24 to 26 above, issued prescriptions without authority to do so, obtained or possessed
15 an invalid prescription, obtained or possessed a controlled substance by means of such invalid
16 prescription, or conspired, assisted in and/or abetted any of these acts.

17
18 SEVENTH CAUSE FOR DISCIPLINE

19 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

20 33. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
21 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
22 24 to 26 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
23 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

24
25 EIGHTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct)

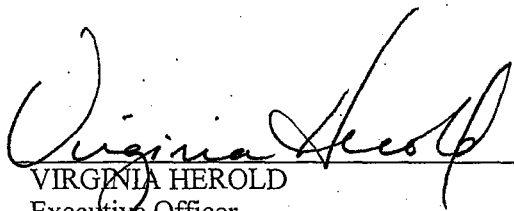
27 34. Respondent is subject to discipline under section 4301 of the Code in that
28 Respondent, as described in paragraphs 24 to 33 above, engaged in unprofessional conduct.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 50785, issued to Johana Sandoval (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED: 11/2/10


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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